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Letter dated 24 April 2001 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to forward to the Council Rwanda's reaction to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2001/357 of 12 April 2001).

Rwanda wishes to restate its reason for being in the Congo as always expressed: that our troops were/are there fighting Interahamwe and ex-Forces armées rwandaises and to ensure the security of our territory and people. Stating it otherwise is diverting us from the real issues and Rwanda reiterates its support for the Lusaka Ceasefire Agreement, the only way forward in curbing accusations and counter-accusations.

Rwanda hopes that the Security Council will continue to assist the parties to the Lusaka Agreement towards full implementation of the Agreement without further delay and for all of the parties to move ahead with their expressed commitment.

I would appreciate it if this document were circulated to all members as a document of the Security Council.

(*Signed*) Joseph W. **Mutaboba**
Ambassador
Permanent Representative

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Annex to the letter dated 24 April 2001 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council

Reaction of the Government of Rwanda to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

This is a type of report the reader should read backwards. One should start with the wild recommendations in order to follow the absurdity of the report's contents. It is quite clear that the recommendations of the "Experts" were pre-set wishes on which they based their methodological framework.

It is indeed not surprising that their first attempt at producing a report was found inadequate and they had to be made to review it. Unfortunately, the second attempt is still very unprofessional and full of hearsay and innuendos. It is indeed not very helpful to the Security Council to depend on experts who have absolutely no knowledge of the region they are doing research on; because what you end up with are unsubstantiated newspaper stories indeed street talk and revisionist propaganda.

There are basically four issues that made the Panel of Experts produce this type of report:

1. They interpreted their mandate as witch-hunting, and produced something that seems to confirm what they considered given.
2. They worked under an umbrella of a daydream of the non-existence or indeed irrelevance of the rebellion in the Democratic Republic of Congo.

3. They based their main findings on a misconception of "illegality" and legitimacy.
4. They completely ignore or are ignorant of the history or trade links in the Great Lakes Region.
5. The Panel did not look at existing International treaties and conventions to which Rwanda and the DRC are party.

As far as the Panel's interpretation of their mandate is concerned, it manifests itself clearly in the unreliable sources of information. References to either "deserters", "high number of insiders living in the DRC and in Europe", "reliable sources" that are not identified, makes the report sound more like fictitious stories than anything else, and no effort was made to fulfill the mandate.

The Panel of Experts' report premises its findings on an assumption that the rebellion should have no say in the territories they control. They are obviously out of touch with the Lusaka Agreement and don't seem to know that these rebels have been invited for debates at the UN Security Council. According to the report, "all activities taking place in the Democratic Republic of Congo without the consent of the legitimate government are illegal".

This indeed is absurd and would obviously lead to absurd conclusions. To assume that all activities carried out by Congolese who are not under the Kinshasa administration are illegal is to ignore the realities on the ground. There are people living in the rebel-controlled areas. Wherever people are, there will always be economic activities. In these areas

there is an administration looking after the health, education and general well being of their population. These Congolese have every right to exploit the natural resources and other forms of wealth under their control as is indeed recognized by the Panel of Experts in paragraph 14b.

TRADE BETWEEN RWANDA AND CONGO

First of all, the report purports to be dealing with illegal exploitation since the beginning of the war in the DRC, but ends up attacking existing legal trade which the report refers to as illegal. Trade within the region did not start with the war in the Democratic Republic of Congo. Secondly, illegal Trade in any Commodity only happens if:

(a) The commodity is prohibited for trade due to health, phyto-sanitary, or any other well established reason. Such cases are notified to all World Trade Organisation members.

(b) Goods are traded in a manner that contravenes established International or domestic trade procedures. Such procedures are well elaborated in the World Trade Organisation treaty, Regional and Sub-regional treaties as well as national Trade and Custom's Laws.

Rwanda and the Democratic Republic of Congo are signatories, and therefore members of the WTO, COMESA, CEPGL and the Northern Corridor organization. All these treaties and protocols oblige either country to facilitate trade between its peoples, transit of goods between

the two states, as well as free transiting of either country's cargo to a third party country. The present state of affairs dictates that all these transactions are carried out in the framework of the Lusaka agreement, which stipulates that the internationally recognized parties in the DRC, shall control territories they hold until new institutions are put into place.

CEPGL treaty was signed on 20th September 1976 between Rwanda, Burundi and Zaïre (currently the Democratic Republic of Congo). The treaty provides for co-operation in Banking Industry, Electricity, and Trade between the three states. Timber and cassiterite are listed among the products the Democratic Republic of Congo can export to Rwanda or Burundi as n° 1 and n° 40. The list covers 51 products. It is important to note that under this protocol, the three states trade in their local currencies, and their Central Banks carry out compensation. Trade between the three States is carried out by nationally registered companies (local and International) or individuals with nationally recognized licenses. There is no single Company / Enterprise or Individual without a proper license that has exploited timber or cassiterite and exported it to Rwanda in disregard of the CEPGL treaty. The burden of proof lies with the Panel of 'Experts'. Trade in these products existed even before the establishment of CEPGL and there is absolutely no reason why it should have stopped in the 1990's.

Rwanda has heavy mineral deposits with some under exploitation and others yet to be exploited. Among those under exploitation are Coltan (best quality in the Region), Cassiterite and Wolfram. Rwanda currently produces an average of 120 MT of Coltan per month which

accounts for the export figures supported by Rwanda certificates of origin. Both local and international enterprises registered to mine and trade in minerals, are exploiting and exporting these minerals to Europe with a certificate of origin signed and endorsed by competent civil servants of the Ministry of Commerce, Industry and Tourism. Samples of their signatures have been submitted to the European Union and COMESA Secretariats.

The above enterprises are by international trade regulations (Refer to WTO Regulations) free to import minerals either similar to those produced in Rwanda or completely non-existent in Rwanda for re-export or processing for export. Minerals that are re-exported are not accompanied by Rwanda Certificate of origin. Those that are processed and exported are accompanied by a certificate of origin indicating clearly the percentage of value added on the product by the Rwandan company and the percentage attributed to the country of origin of the raw materials. To date, Rwanda has not issued such a certificate of origin because not a single company in Rwanda has fully engaged itself in the processing of Minerals.

Under article 2 of Transit Regulations as contained in the Treaty establishing COMESA and under Rwanda's Customs legislation of 31st July 1992, Re-exportation and Transiting of Goods in Rwanda is Legal. Rwanda, like any other Member of WTO and COMESA, is legally bound to facilitate both re-exportation and transiting of goods within the set up procedures. Thus a company registered and doing mining business in the Democratic Republic of Congo can transit any minerals through

Rwanda to Europe or elsewhere. Rwanda issues RCTD (Road-Customs Transit Declaration) forms to such companies and only charges warehousing fees.

The government of Rwanda is not aware of any existing illegal trade, and stands to be corrected. If there is, the Panel of Experts should be in a position to provide in its report, the following:

(1) Evidence of any company that has transited minerals from D.R.Congo through Rwanda against the provisions of COMESA, CEPGL and or WTO treaties.
(2) Evidence that Rwanda has exported diamonds given in table 5 (Including paragraphs 104 and 107) of the report by producing certificates of origin that accompanied the mentioned exports.
(3) The Laws or Conventions disregarded in facilitating transit of goods of Democratic Republic of Congo origin through Rwanda's Dry Port.

SPECIFIC ALLEGATIONS

In responding to specific allegations, the Government of Rwanda will now reply paragraph by paragraph where the report attempts to implicate Rwanda.

Para 31. Gulamali as a businesswoman is not a creation of Rwanda's presence in the DRC. She has been carrying out business activities in the Congo for over thirty years the panel could have been convincing by giving evidence of particular Rwanda support given to Mrs Gulamali.

In Paragraph 31, the report alleges that "Kigali military Airport" is used to facilitate transportation of Arms, military equipment and other merchandise. It should be clearly noted that Rwanda has no military Airports whatsoever.

Para 33. The Eastern part of the Congo has been cut off in terms of international air communication. In the face of this situation, the Congolese goods and people have found it necessary to transit through Kigali, for there are no international flights to Goma and Bukavu. Provisions of these services are not prohibited by any existing international laws. Therefore, the accusation that Kigali International Airport is used as a conduit for transporting Congolese goods is baseless.

Para 37. The report cites accusations leveled against Rwanda by an alleged "RCD defector". How does an international Panel make such serious allegations basing their information on what they describe as an "RCD defector" who must have a grudge against the RCD and its ally Rwanda?

Para 38. In these paragraphs the report insinuates that the RPA both encouraged and participated in an alleged looting of local banks in Kisangani. The conclusions are based on the simplistic view that the soldiers involved in the alleged looting did not speak Lingala. This caliber of 'sources' and

the flimsy conclusions demonstrated above expose the research by the 'Experts' as lacking in seriousness.

Para 55. Allegations against Rwandans of extracting Congolese timber once again reflect ignorance on the part of the Panel with regard to existing Regional Trade Agreements and Conventions. If there are any Rwandan nationals involved in trade and commerce in Burundi or DRC, this is legitimate trade, which has been going on for the last 25 years, within the context of the CEPGL Agreement signed between the three countries in 1976. As a matter of fact, for decades, there have been a number of Rwandans who own and exploit thousands of acres of forests in the DRC.

Para 58. This part of the report sadly demonstrates how the document is nothing but fiction. In paragraph 58, the Panel mentions an alleged RPA Officer, one Commander Ruto, involved in the mining of coltan. It should be on record that there is no such rank as Commander in the Rwandan military institution, and, there is no soldier or officer by the name Ruto in the RPA.

Para 60. The Panel's report seeks to implicate the Government of Rwanda in organised extraction of Congolese natural resources by alleging that the Government has utilized prisoners to "dig coltan in exchange for a sentence reduction and limited cash to buy food". Much as the Panel does not

seem to be aware of the source of this allegation (the report simply indicates that "the Panel was recently informed"), this accusation was levelled against Rwanda by MISNA, a Roman Catholic News Agency, in early March and subsequently challenged by the Government to the embarrassment of MISNA itself. Today, there is a relatively large number of prisoners in Rwanda, a situation stemming from the 1994 genocide. The Government of Rwanda has been most open with the prisons system. Indeed, the Administration and maintenance of the prisons is jointly done by the Government and organizations representing the international community. The International Committee of the Red Cross (ICRC), The Penal Reform International (P.R.I.) and Avocats sans Frontières are three known organizations, which have worked closely with the Government with regard to the welfare of the prisoners. There is no way, therefore, that any number of prisoners would have been moved, much less crossed international borders, for any purpose without the knowledge of these organizations!

Para 61. The allegation that Rwanda is involved in destabilizing the wild-life population in the Kahuzi-Biega Park is unfounded, given the fact that there has never been any Rwandan Military deployment in this particular area. Instead it is a stronghold of the Interahamwe militia suspected to have murdered tourists in Bwindi Game Reserve in 1999.

Para 64. The report also states that "Imported goods for the occupied zones arrive via the ports of Mombasa and Dar-es-Salaam. This was supposedly confirmed during the Panel's visit to the customs services ... in Kampala". This particular declaration on the part of the Panel demonstrates that it simply drew its conclusions from a position of ignorance. There is nothing new, no discovery, in the fact that the whole of Eastern Congo hinterland to date uses the ports of Mombasa and Dar-es-Salaam because of geographical proximity. The alternative longer route is through the Port of Matadi on the Atlantic Ocean along the River Congo.

Para 68. The accusation that Congolese nationals hold Bank accounts in Rwandan Banks needs to be put in context. The CEPGL Agreement allows nationals of Rwanda, Burundi, and DRC to carry out Bank transactions in any of the three countries without hindrance. The Congolese people have, over decades, carried out transactions with Rwandan financial institutions and the Rwanda Postal System within the existing regional conventions. Once again, where it is happening, it is legitimate and legal.

Para 73 - 75 & 86.

The Companies mentioned in these paragraphs are both Rwandan and foreign private businesses with no link to the Government of Rwanda.

It should be clearly understood that the Minister of Finance or any member of his family has no interests whatsoever with Air Navette. The Minister of Finance reserves the right to take legal action against this blatant defamation.

The insinuation in paragraph 86 that transactions between individual private banks and certain political organizations in the region have the approval of the Government of Rwanda has no basis.

Para 76. The allegation that natural resources extracted from the Congo are illegally transported through Kigali is not correct. This has clearly been demonstrated by the existence of regional trade conventions, the inaccessibility of Eastern Congo by international carriers and the fact that RCD is an organization responsible for the welfare of a population of over twenty million people.

Para 77. With regard to the financial and banking allegations in this paragraph, it should be pointed out that there were no new banks established in Rwanda after 1997. Secondly, two of

the banks mentioned in this paragraph, namely Union des Banques Congolaises and Banque Commerciale du Congo, have neither their headquarters nor any branches in Rwanda, although once again there would be nothing illegal if they did.

Para 83. The report seeks to identify certain businessmen with the Government and individual leaders in Rwanda. Mr. Modeste MAKABUZA is a case in point. This is a well-known Congolese businessman, whose family trading activities span a period of four decades. He has no known business connection with the leadership in Rwanda and with President KAGAME in particular, whom the Panel's report has shamelessly chosen to single out.

Para 84. This part of the report once again demonstrates the laughable nature of the work carried out by the Panel. Neither the names of the officers nor the designations mentioned in the paragraph exist in Rwanda.

Para 90 & 91.

Allegations put forward in these two paragraphs are, like any others in the report, wild, unfounded, and baseless, and the Government of Rwanda challenges the Panel to substantiate them.

Para 110 – 114

The calculations in these paragraphs are based on three false premises. First the figures are all fictitious. Rwanda does not have 25,000 soldiers in DRC. Second the frequency of use and cost of aircraft are wildly exaggerated. Third, the bonus payments to RPA soldiers in the DRC, don't exist.

Para 126, 127, 128 & 129.

As demonstrated by the Government of Rwanda throughout this response, the report has failed to establish that RPA has:

(a) any direct commercial activities in DRC
(b) shares in any companies or enterprises
(c) any direct payments from RCD
(d) any protection money and indeed any tax revenues received by the so-called "Congo desk"
(e) any uptake by RPA soldiers from Congo.

Para 175 - 179.

Allegations in these paragraphs demonstrate total disregard on the part of the Panel as far as the root causes of the war in the DRC and the conflict in the Great Lakes region are concerned. They are in contradiction with the recommendations of the countries of the region and the UN Security Council itself, as to the way forward in resolving the conflict in the Great Lakes region, which is the implementation of Lusaka Agreement as it is.

Paragraph 185:

Bilateral aid for Rwanda comes in two forms: either as direct budget support or through NGOs.

There is a transparent budgetary process with inbuilt accountability mechanisms; namely the Institutions of the Auditor General, Cour des Comptes, and the Parliamentary Public Accounts Committee. All these are functional and ensure that public funds are utilized as provided for in the Finance Law.

The balance of payments support situation is very clear. Government social sector expenditure (education, health and other social services) has steadily increased over the last three years. Infact, it has more than doubled for health and education over this period.

The Bretton Woods Institutions records are available to testify to this. In addition, there are independent yearly audits by donors giving direct budget support, e.g. Crown Agents for the United Kingdom and the French-based "MD 21 Company" for the European Union funds.

These audit reports are available and reflect what this aid exactly does. The panel did not have to speculate on what these funds are utilized for.

Paragraphs 187- 190:

From 1998, Rwanda started an economic structural adjustment programme with the Bretton Woods Institutions. There is an inbuilt mechanism of monitoring the implementation of the various structural, fiscal and monetary reforms. The International Monetary Fund (IMF) and the World Bank have very competent staff whose duty it is to verify compliance. The work of these reputable UN bodies and their staff over this period is there for everybody to see. The panel would have done these institutions and their staff better justice if they had consulted their work and records. To date, nobody has refuted the competence of these institutions.

Rwanda's qualification for HIPC Initiative was a result of firm government commitment to the implementation of the required reforms and achievement of the set targets. The clearly set criteria were hard earned and not simply a reward as the panel would like to put it.

Paragraph 190 is erroneous and contradicts paragraphs 110 –111. The defense budget has not increased instead it has steadily decreased as follows (as % GDP):

1998 - 4.3
1999 - 4.2
2000 - 3.8
2001 - 3.2

(Source: IMF: Rwanda: Memorandum of Economic and Financial Policies, Nov 2000)

Paragraph 195:

We submit that the Panel, by its own admission, has no basis for dragging Rwanda's Head of State, let alone his family, into its report. If indeed the Panel has no evidence of his family's involvement in diamond trade, why mention it? If it is not intended to tarnish his name? It is not acceptable that a Panel with a UN mandate can engage in an unwarranted smear campaign against Heads of States of member states, their families, or even as individual citizens.

Paragraph 196-197:

The report wants the world to believe that there is something inherently evil for a Head of State to know some of the country's prominent business people. We, however want to categorically refute the insinuation that, this makes President Kagame a business associate or in any way interferes with the responsibilities of his high office.

Paragraph 198:

The reorganization of all Rwandan institutions is done in accordance with our fundamental law, which came into force in 1993. There is no way President Kagame can create institutions outside this frame-work. That is why the report is wrong to suggest there is a Department of External Relations in the Ministry of Defence that carries out business transactions for the RPA.

Paragraph 200:

The report continues to misrepresent the President's words and intentions. When he said Rwandan citizens carry out commercial activities in DRC, he was stating a fact. None of that has changed. He was not deceiving anybody and he had correct information. Rwanda government considers the attitude of Panel members on this issue shocking and a grave insult. It is equally disingenuous for the Panel to distort the words of the President. When he talked of a "self-sustaining war", he was referring to the capacity of RCD to shoulder their own costs of the war.

Paragraph 210:

> The mission of the RPA has not been diverted as the Report claims. The RPA under the leadership of President Kagame stopped Genocide and it has continued to successfully protect the people and territory of Rwanda. The RPA freed 1.5 million refugees held hostage in DRC by EX-FAR and Interahamwe in 1996. The massive infiltration and barbaric acts committed by the same genocidal forces have reduced to insignificance because the RPA has contained them. Today, the RPA is undeniably exemplary in the implementation of the Lusaka Agreement.

Paragraph 211:

> The Panel has not proved the existence of criminal cartels in this region. The region is "fragile and sensitive" because proven criminal forces, including Interahamwe and EX-FAR, are supported militarily, politically, and morally in spite the numerous Security Council resolutions urging member states to cease all forms of assistance to them.

President Kagame was instrumental in stopping genocide, the ultimate crime, and will continue to ensure the people of Rwanda maintain the capacity to prevent a recurrence of genocide. The International Community should not be diverted from correcting mistakes of the past that allowed genocide to occur in its presence in the first place.

The Government of Rwanda believes that most of these allegations stem from, and are part of, a revisionist campaign whose authors are well known. The campaign which seeks, on one hand, to deter the Government and people of Rwanda from searching for a lasting solution to their security problems, and on the other, to attempt to justify continued support for the genocidal forces that are the real reason why our forces are in DRC.

CONCLUSION :

The spirit that guided the work of the Panel of Experts is clearly demonstrated in their conclusions and recommendations. First and foremost, the Panel states that "its report and recommendations are consistent" with resolutions 1304 (2000) and 1341 (2001) of the Security Council as well as the Lusaka Agreement. This couldn't be more wrong. They are diametrically opposed. It is indeed very interesting that the first recommendation they make is an extension of their mandate. How mercenary?

Most of their recommendations, particularly those dealing with sanctions and financial and economic matters, are very crude attempts to imply that the rebellion in Congo should simply be dismantled, and their allies also suffer the consequences of having supported it. The Experts are advocating that the Security Council reject the Lusaka process, obviously a step in the wrong direction. It is not necessary to go into details of their recommendations on diamond business, forest and timber, reparation and compensation and framework for

reconstruction, as the recommendations are based on pure bias. The bias of the report is further set in its definition of what commodities to investigate. Paragraph 13 lists resources, which only occur in areas controlled by rebels. Cooper, Cobalt, Uranium, Kasai diamonds and oil are passed over since in the eyes of the panel they are plundered by a "legitimate" government and its allies. Indeed, one of the most disturbing feature of the report is its glossing over the real plundering of the natural resources and other forms of wealth by the Kinshasa Government and its allies. The criminal transactions carried out partly for financing the war and partly for enriching some individuals are handled in the Panel's report as if they were normal transactions. This is of course due to the Panel's deliberate misconception of legitimacy and legality.

In paragraph 242, by seeking personal security and protection of the security council, members of the panel imply that what they have done will cause harm to countries, organizations and individuals mentioned in the report. This further demonstrates the unprofessional behavior of panel members. This report was not investigating anything more dangerous in the region then say the flow of arms to the genocidaires [(see Council Resolutions 918(1994), 997(1995), 1011(1995), 1013(1995), 1161(1998) plus letter S/1998/438 and report S/1998/1096)]. The plea can only mean that the whole report is suspicious and deliberately seeks to injure countries, and individuals mentioned in the report.

It is very important that the World body does not fall into the trap of those who continue to want to divert world attention from the real causes of the current situation in the DRC. The Security Council will

recall that it set up an International Commission of Inquiry (Rwanda), which submitted its report S/1998/1096 in November 1998. In paragraph 87 of their report they make it clear that "The Commission is convinced that the ex-FAR and Interahamwe have continued to receive arms and ammunition both through their close links with other armed groups in Angola, Burundi, Uganda and elsewhere, and most recently, from the Government of the Democratic Republic of Congo. Despite the imposition upon them of a Security Council arms embargo, which has remained in force since the genocide of 1994. The Ex-FAR and Interahamwe have now become in effect the allies of the Government of Democratic Republic of Congo and its allies, the Governments of Angola, Chad, Namibia and Zimbabwe. The new relationship has conferred a form of legitimacy on the Interahamwe and the ex-FAR. This is a profoundly shocking state of affairs".

This indeed is the root cause of the war in DRC, as far as Rwanda is concerned, and not commercial activities. Any reports that would attempt to divert the focus of the Security Council from the Lusaka process are very dangerous indeed.

Finally, the Security Council is urged to keep on course in as far as securing peace and security in the Great Lakes region is concerned. In so doing, it must watch out for various maneuvers that attempt to divert our attention from the real problem of the negative forces such as Interahamwe, FDD, ADF etc and their sponsors. This particular report is diversionary, maliciously unfair, and definitely ill intentioned. It should therefore be dismissed in its totality.

Kigali, 23 April 2001.